



U.S. Department of Justice

*United States Attorney
District of Connecticut*

Connecticut Financial Center

(203) 821-3700

*157 Church Street, 23rd Floor
New Haven, Connecticut 06510*

*Fax (203) 821-3829
www.usdoj.gov/usao/ct*

December 20, 2006

Jared M. Lefkowitz, Esq.
250 Park Avenue
20th Floor
New York, NY 10177

**Re: United States v. Matthew Ianniello
Criminal No. 3:06cr161(EBB)**

Dear Attorney Lefkowitz:

This letter confirms the plea agreement entered into between your client, Matthew Ianniello (the “defendant”), and the United States Attorney’s Office for the District of Connecticut (the “Government”) concerning the referenced criminal matter.

The Pleas and Offenses

Matthew Ianniello, the defendant, agrees to plead guilty to: (1) Count Two of the Indictment, which charges him with racketeering conspiracy in violation of 18 U.S.C. § 1962(d) and (2) Count Sixty-Two of the Indictment, which charges him with conspiring to defraud the United States Internal Revenue Service (“IRS”) in violation of 18 U.S.C. § 371 (*Klein* conspiracy).

The defendant understands that to be guilty of racketeering conspiracy (Count Two), in violation of 18 U.S.C. § 1962(d), the following essential elements of the offense must be satisfied:

1. That an enterprise existed as defined by Title 18, United States Code, § 1961(4);
2. The enterprise engaged in, or its activities affected, interstate commerce;
3. The defendant was associated with the enterprise and admits that it was an association in fact; and
4. The defendant knowingly and willfully became a member of the conspiracy.

The defendant understands that to be guilty of conspiring to defraud the United States Internal Revenue Service (Count Sixty-Two), in violation of 18 U.S.C. § 371, the following essential elements of the offense must be satisfied:

1. That the defendant, together with others, entered into an unlawful agreement as charged in the Indictment, namely to knowingly and willfully conspire to defraud the United States Internal Revenue Service;
2. That the defendant knowingly and willfully became a member of the conspiracy;
3. That one member of the conspiracy knowingly committed at least one of the overt acts charged in the Indictment; and
4. That the overt acts were committed to further an objective of the conspiracy.

The Penalties

Count Two carries a maximum penalty of 20 years of imprisonment; Count Sixty-Two carries a maximum penalty of 5 years of imprisonment. Both Counts Two and Sixty-Two carry a maximum possible fine of \$250,000 and a maximum term of supervised release of three years. The defendant understands that should he violate any condition of the supervised release during its term, he may be required to serve a further term of imprisonment up to two years with no credit for the time already spent on supervised release.

The defendant also is subject to the alternative fine provision of 18 U.S.C. § 3571. Under this section, the maximum fine that may be imposed on the defendant is the greatest of the following amounts: (1) twice the gross gain to the defendant resulting from the offense; (2) twice the gross loss resulting from the offense; or (3) \$250,000.

In addition, the defendant is obligated by 18 U.S.C. § 3013 to pay a special assessment of \$100 on each count of conviction, which in this case totals \$200. The defendant agrees to pay the \$200 special assessment to the Clerk of the Court prior to the day he is sentenced.

Finally, unless otherwise ordered, should the Court impose a fine of more than \$2,500 as part of the sentence, interest will be charged on the unpaid balance of a fine amount not paid within 15 days after the judgment date. 18 U.S.C. § 3612(f).

Forfeiture

Pursuant to 18 U.S.C. § 1963, and based on his commission of the illegal acts of racketeering conspiracy, U.S.C. § 1962(d), as charged in Count Two of the Indictment, the defendant agrees to forfeit all interests in approximately \$130,680 in United States currency, which was seized on or about July 19, 2005, from the residence of the defendant located at 10 Tredwell Drive, Old Westbury, New York (hereinafter, the “forfeitable asset”). The defendant acknowledges that the forfeitable asset is subject to forfeiture as proceeds of illegal conduct, property facilitating illegal

conduct and property involved in, or traceable to property involved in, illegal conduct giving rise to forfeiture. The defendant warrants that he is the sole owner of the forfeitable asset. The defendant agrees to waive all interests in the forfeitable asset in any administrative or judicial forfeiture proceeding, whether criminal or civil, state or federal. The defendant agrees to consent to the entry of an order of forfeiture for the forfeitable asset and waives the requirements of Federal Rules of Criminal Procedure 32.2 and 43(a) regarding notice of the forfeiture in the charging instrument, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment. The defendant acknowledges that he understands that the forfeiture of assets is part of the sentence that may be imposed in this case and waives any failure by the Court to advise him of this, pursuant to Federal Rule of Criminal Procedure 11(b)(1)(J), at the time his guilty plea is accepted.

The defendant agrees to hold the United States, its agents and employees harmless from any claims whatsoever in connection with the seizure or forfeiture of forfeitable asset covered by this agreement. The defendant further agrees to waive all constitutional and statutory challenges in any manner (including direct appeal, habeas corpus, or any other means) to any forfeiture carried out in accordance with this plea agreement on any grounds, including that the forfeiture constitutes an excessive fine or punishment. The defendant also understands and agrees that by virtue of his pleas of guilty he waives any rights or cause of action to claim that he is a “substantially prevailing party” for the purpose of recovery of attorney fees and other litigation costs in any related forfeiture proceeding pursuant to 28 U.S.C. § 2465(b)(1).

Restitution

In addition to the other penalties provided by law, the Court must also order that the defendant make restitution under 18 U.S.C. § 3663A to the United States in the amount of \$277,970.90, which includes the principal owed to the United States plus interest and penalties as of December 31, 2006, relative to the offense charged in Count Sixty-Two.

Sentencing Guidelines

1. Applicability

The defendant understands that although application of the United States Sentencing Guidelines (“U.S.S.G.” or “Guidelines”) is not mandatory, the Guidelines are advisory and the Court is required to consider any applicable Sentencing Guidelines as well as other factors enumerated in 18 U.S.C. § 3553(a) to tailor an appropriate sentence in this case. *See United States v. Booker*, 542 U.S. 956 (2005). The defendant expressly understands that the Sentencing Guideline determinations will be made by the Court, by a preponderance of the evidence, based upon input from the defendant, the Government, and the United States Probation Officer who prepares the presentence investigation report. The defendant further understands that he has no right to withdraw his guilty plea if his sentence or the Guideline application is other than he anticipated.

2. Acceptance of Responsibility

At this time, the Government agrees to recommend that the Court reduce by two levels the defendant's Adjusted Offense Level under section §3E1.1(a) of the Sentencing Guidelines, based on the defendant's prompt recognition and affirmative acceptance of personal responsibility for the offenses. Moreover, the Government intends to file a motion with the Court pursuant to §3E1.1(b) recommending that the Court reduce defendant's Adjusted Offense Level by one additional level based on the defendant's prompt notification of his intention to enter a plea of guilty. This recommendation is conditioned upon the defendant's full, complete, and truthful disclosure to the Probation Office of information requested, of the circumstances surrounding his commission of the offense, of his criminal history, and of his financial condition by submitting a complete and truthful financial statement. In addition, this recommendation is conditioned upon the defendant timely providing complete information to the Government concerning his involvement in the offense to which he is pleading guilty. The defendant expressly understands that the Court is not obligated to accept the Government's recommendation on the reduction.

The Government will not make this recommendation if the defendant engages in any acts that (1) indicate that he has not terminated or withdrawn from criminal conduct or associations (Sentencing Guideline section § 3E1.1); (2) could provide a basis for an adjustment for obstructing or impeding the administration of justice (Sentencing Guideline § 3C1.1); or (3) constitute a violation of any condition of release. The defendant expressly understands that he may not withdraw his plea of guilty if, for the reasons explained above, the Government does not make this recommendation.

3. Guidelines Stipulation

The Government and the defendant calculate the defendant's applicable Sentencing Guidelines as follows:

A. Racketeering Offense

The base offense level under U.S.S.G. § 2E1.1(a) is 19. Three levels are subtracted under U.S.S.G. § 3E1.1 for acceptance of responsibility, as noted above. Further, two levels are added pursuant to § 3B1.1(c) in light of the defendant's role, resulting in an offense level of 18.

B. Tax Offense

The parties stipulate and agree that under U.S.S.G. § 2T1.1(a)(1), the relevant Guidelines provision for the tax offense, the base offense level is set by the tax loss figures in U.S.S.G. § 2T4.1.

The parties agree that the total Guidelines tax loss relevant to the tax offense of conviction (namely, the monies the IRS did not receive from the defendant for the 2001, 2002, 2003 and 2004 tax years that should have been paid to the IRS) is \$139,221. The parties agree that the base offense

level under § 2T4.1 is 16, and that a two level enhancement pursuant to U.S.S.G. § 2T1.1(b)(1) is appropriate. After subtracting three levels for acceptance of responsibility, the parties agree that the total offense level is 15.

C. Grouping Analysis

Pursuant to the grouping rules contained in Chapter 3, Part D of the Guidelines, the parties agree that the defendant's convictions on Counts Two and Sixty-Two should be grouped. *See* U.S.S.G. § 3D1.2(c). Accordingly, the parties agree that the defendant's offense level is 18.

D. Sentencing

The parties also agree that the defendant will move for, and the Government will not object to, a downward departure of three levels based on pursuant to U.S.S.G. § 5H1.4, which will result in a total offense level 15. A total offense level 15, with a criminal history category III, which the parties calculate the defendant to be based on information currently available, results in an advisory sentencing range of 24-30 months of imprisonment and a fine range of \$4,000 to \$40,000. *See* U.S.S.G. § 5E1.2(C)(3).

The parties further agree that no other downward or upward departures from the sentencing range set forth above are warranted and that a sentence within the agreed range of 24-30 months imprisonment is reasonable. Accordingly, neither party will seek such a departure or seek any adjustment not set forth herein. Nor will either party suggest that the Probation Department consider such a departure or adjustment, or suggest that the Court *sua sponte* consider such a departure or adjustment.

The Government recognizes that when the defendant is sentenced by this Court pursuant to the instant pleas of guilty, he may be subject to an undischarged term of imprisonment as a result of his conviction earlier this year in *United States v. Ianniello*, 05CR774. The Government understands that the defendant will request that the Court in the instant matter impose a concurrent term of imprisonment, and the Government agrees that it will not oppose this request. *See* 18 U.S.C. § 3584.

The defendant expressly understands that the Court is not bound by this agreement on the Guideline and fine ranges specified above. The defendant further expressly understands that he will not be permitted to withdraw the plea of guilty if the Court imposes a sentence outside the Guideline range or fine range set forth in this agreement.

In the event the Probation Office or the Court contemplates any sentencing calculations different from those stipulated by the parties, the parties reserve the right to respond to any inquiries and make appropriate legal arguments regarding the proposed alternate calculations. Moreover, the Government expressly reserves the right to challenge or defend any sentencing determination, other than that stipulated by the parties, in any post-sentencing proceeding.

Information to the Court

The Government expressly reserves its right to address the Court with respect to an appropriate sentence to be imposed in this case. Moreover, it is expressly understood that the Government will discuss the facts of this case, including information regarding the defendant's background and character with the United States Probation Office and will provide the Probation Officer with access to its file, with the exception of grand jury material.

Waiver of Rights

Waiver of Trial Rights and Consequences of Plea

The defendant understands that he has the right to be represented by an attorney at every stage of the proceeding and, if necessary, one will be appointed to represent him.

The defendant understands that he has the right to plead not guilty or to persist in that plea if it has already been made, the right to be tried by a jury with the assistance of counsel, the right to confront and cross-examine the witnesses against him, the right not to be compelled to incriminate himself, and the right to compulsory process for the attendance of witnesses to testify in his defense. The defendant understands that by pleading guilty he waives and gives up those rights and that, if the plea of guilty is accepted by the Court, there will not be a further trial of any kind.

The defendant understands that if he pleads guilty, the Court may ask him questions about each offense to which he pleads guilty, and if he answers those questions falsely under oath, on the record, and in the presence of counsel, his answers may later be used against him in a prosecution for perjury or making false statements.

Waiver of Right to Appeal or Collaterally Attack Sentence

The defendant acknowledges that under certain circumstances he is entitled to appeal his conviction and sentence. 18 U.S.C. § 3742. It is specifically agreed that the defendant will not appeal or collaterally attack in any proceeding, including but not limited to a motion under 28 U.S.C. § 2255 and/or §2241, the conviction or sentence of imprisonment imposed by the Court if that sentence does not exceed 30 months even if the Court reaches a sentencing range permitting such a sentence by a Guideline analysis different from that specified above. The defendant expressly acknowledges that he is knowingly and intelligently waiving his appellate rights.

Waiver of Statute of Limitations

The defendant understands and agrees that should the conviction following the defendant's plea of guilty pursuant to this plea agreement be vacated for any reason, then any prosecution that is not time-barred by the applicable statute of limitations on the date of the signing of this plea agreement may be commenced or reinstated against the defendant, notwithstanding the expiration

of the statute of limitations between the signing of this plea agreement and the commencement or reinstatement of such prosecution. The defendant agrees to waive all defenses based on the statute of limitations with respect to any prosecution that is not time-barred on the date the plea agreement is signed.

Waiver of Right To Post-Conviction DNA Testing of Physical Evidence

The defendant understands that the Government has various items of physical evidence in its possession in connection with this case that could be subjected to DNA testing. The defendant further understands that following conviction in this case, he could file a motion with the Court to require DNA testing of physical evidence pursuant to 18 U.S.C. § 3600 and § 3600A in an attempt to prove his innocence. The defendant fully understands his right to have all the physical evidence in this case tested for DNA, has discussed this right with his counsel, and knowingly and voluntarily waives his right to have such DNA testing performed on the physical evidence in this case. Defendant fully understands that because he is waiving this right, the physical evidence in this case will likely be destroyed or will otherwise be unavailable for DNA testing in the future.

Acknowledgment of Guilt; Voluntariness of Plea

The defendant acknowledges that he is entering into this agreement and is pleading guilty freely and voluntarily because he is guilty. The defendant further acknowledges that he is entering into this agreement without reliance upon any discussions between the Government and him (other than those described in the plea agreement letter), without promise of benefit of any kind (other than the concessions contained in the plea agreement letter), and without threats, force, intimidation, or coercion of any kind. The defendant further acknowledges his understanding of the nature of the offenses to which he is pleading guilty, including the penalties provided by law. The defendant also acknowledges his complete satisfaction with the representation and advice received from his undersigned attorney. The defendant and his undersigned counsel are unaware of any conflict of interest concerning counsel's representation of the defendant in the case.

Scope of Agreement

The defendant acknowledges and understands that this agreement is limited to the undersigned parties and cannot bind any other federal authority, or any state or local authority. The defendant acknowledges that no representations have been made to him with respect to any civil or administrative consequences that may result from his pleas of guilty because such matters are solely within the province and discretion of the specific administrative or governmental entity involved.

The defendant understands and acknowledges that this agreement has been reached without regard to any civil tax matters that may be pending or which may arise involving him. The defendant agrees to cooperate with federal and state civil tax authorities in relation to his tax liability, and specifically agrees to meet with Revenue Agents of the Internal Revenue Service within two weeks of the entry of his guilty plea to the *Klein* conspiracy to ascertain the tax, penalties and interest due

and owing for the years under investigation and, prior to the date of sentencing, file amended tax returns and establish a payment schedule. The Government has notified the defendant that its preliminary calculation of the total taxes, penalties and interest (calculated through December 31, 2006) for the years 2001-2004 is \$277,970.90.

Collateral Consequences

The defendant further understands that he will be adjudicated guilty of each offense to which he has pleaded guilty and may thereby be deprived of certain rights, such as the right to vote, to hold public office, to serve on a jury, or to possess firearms. The defendant understands that the Government reserves the right to notify any state or federal agency by which he is licensed, or with which he does business, of the fact of his conviction.

Satisfaction of Federal Criminal Liability; Breach

The defendant's guilty pleas, if accepted by the Court, will satisfy the federal criminal liability of the defendant in the District of Connecticut as a result of his participation in the conspiracies that are charged in Counts Two and Sixty-Two of the Indictment in this case. After sentencing, the Government agrees to dismiss Counts One and Eighty-Two through Eighty-Five of the Indictment as those counts pertain to the defendant.

The defendant understands that if, before sentencing, he violates any term or condition of this agreement, engages in any criminal activity, or fails to appear for sentencing, the Government may void all or part of this agreement. If the agreement is voided in whole or in part, the defendant will not be permitted to withdraw his plea of guilty.

No Other Promises

The defendant acknowledges that no other promises, agreements, or conditions have been entered into other than those set forth in this plea agreement, and none will be entered into unless set forth in writing, signed by all the parties.

This letter shall be presented to the Court and filed in this case.

Very truly yours,

KEVIN J. O'CONNOR
UNITED STATES ATTORNEY

MICHAEL J. GUSTAFSON
ASSISTANT UNITED STATES ATTORNEY

The defendant certifies that he has read this plea agreement letter or has had it read or translated to him, that he has had ample time to discuss this agreement with counsel and that he fully understands and accepts its terms.

MATTHEW IANNIELLO
The Defendant

Date

I have thoroughly read, reviewed and explained this plea agreement and any attachment(s) to my client who advises me that he understands and accepts its terms.

JARED M. LEFKOWITZ, ESQ.
Attorney for the Defendant

Date